

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

BENJAMIN COLLINS et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. 5:24-cv-381 (MTT)
)	
MERCURY INSURANCE COMPANY OF GEORGIA,)	
)	
)	
Defendant.)	
)	

ORDER

Plaintiffs Benjamin Collins and Kalyn Collins filed this action against Defendant Mercury Insurance Company of Georgia for breach of contract, bad faith denial of insurance proceeds, and attorney fees under O.C.G.A. §§ 33-4-6, 9-15-14 and 13-6-11. Doc. 1-1 at 1-15, ¶¶ 21-44. Mercury has since moved to dismiss Count III of Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that O.C.G.A. § 33-4-6 provides the exclusive remedy for an insurer's bad faith denial of coverage and precludes claims for attorney fees under O.C.G.A. §§ 13-6-11 and 9-15-14.¹ Doc. 4; *see Thompson v. Homesite Ins. Co. of Ga.*, 812 S.E.2d 541, 546 (Ga. Ct. App. 2018); *Johnston v. Companion Prop. & Cas. Ins. Co.*, 318 F. App'x 861, 868 (11th Cir. 2009) (citation omitted). Plaintiffs have failed to respond.

¹ Count III of Plaintiffs' Complaint seeks attorney fees under O.C.G.A. §§ 13-6-11 and 9-15-14. Doc. 1-1 at 13-14. Mercury argues O.C.G.A. § 33-4-6 is the sole remedy for extracontractual claims, including attorney fees, in a first-party insurance coverage dispute over payment of benefits. Doc. 4; *compare Am. Fam. Life Assur. Co. of Columbus, Ga. v. U.S. Fire Co.*, 885 F.2d 826, 833 n.3 (11th Cir. 1989).

Accordingly, Defendant Mercury Insurance Company of Georgia's Motion to Dismiss Count III of Plaintiffs' Complaint (Doc. 4) is **GRANTED**. Count III of Plaintiffs' Complaint is hereby **DISMISSED** without prejudice.

SO ORDERED, this 16th day of December, 2024.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT